

SYNOPSIS

**WEST VIRGINIA CORPORATE NET INCOME TAX -- STATE
ASSESSMENT OF INTEREST ON STATE TAX LIABILITY, BASED UPON
FINAL DETERMINATION OF FEDERAL DEFICIENCY, BARRED BY
APPLICABLE STATUTE OF LIMITATION THAT EXPIRED 90 DAYS AFTER
TAXPAYER GAVE NOTICE OF SUCH FINAL FEDERAL DETERMINATION --**
Under the clear language of W. Va. Code § 11-10-15(c)(2) [1986], the statute of limitation on issuing an actual “assessment” of West Virginia corporate net income tax (paid), interest (contested), and additions to tax (subsequently waived by Commissioner) expired 90 days after the taxpayer gave notice to the West Virginia State Tax Commissioner of the final determination of the federal tax deficiency giving rise to the state tax deficiency.

FINAL DECISION

FINDINGS OF FACT

1. On January 02, 2004, the Petitioner-taxpayer filed amended West Virginia corporate net income tax returns for the calendar and tax years 1998 and 1999; those amended returns, showing a balance due, respectively (for tax only, excluding interest and any additions to tax), were filed as the result of finalized federal audit changes for those years that indicated a federal (and, therefore, West Virginia) corporate net income tax deficiency for each of those years. The Petitioner remitted with each of the amended West Virginia returns the tax due (excluding interest and any additions to tax).

2. On March 15, 2004, the Corporate & Franchise Tax Unit (“the Unit”) of the Internal Auditing Division of the State Tax Commissioner’s Office (“the Commissioner”

or “the Respondent”) issued to the Petitioner, for each of the years 1998 and 1999, a written, preliminary “Notice of Tax Due,” indicating liabilities for interest and for additions to tax for the year 1998 and liabilities for interest and for additions to tax for the year 1999; the preliminary notices of tax due stated that the Petitioner was to remit payment of these amounts within 15 days, to avoid the issuance of a written notice of “assessment” for these interest and additions liabilities for each of these two years.

3. The Petitioner subsequently informally challenged the liability for the additions to tax and, pending the outcome of that informal challenge, did not pay the liability for the (non-waivable) interest (calculated properly by the Commissioner through the date of payment of the tax itself).

4. On May 15, 2004, the Commissioner, by the Unit, issued an actual notice of “assessment” for the updated interest and additions liabilities.

5. On June 03, 2004, the Petitioner timely filed a “protest” (deemed to be a petition for reassessment, *see* W. Va. Code § 11-10A-8(1)) in which the Petitioner asserted that the assessment of interest and additions to tax was time-barred by the provisions of W. Va. Code § 11-10-15(c)(2) [1986].

6. On June 18, 2004, the Commissioner waived the additions to tax but notified the Petitioner that interest is never waivable and in this matter was still due.

7. On July 23, 2004, the parties waived their right to be heard in person in this matter and agreed to submit the matter for decision on documents only, *see* 121 C.S.R. 1, § 53.1 (Apr. 20, 2003).

DISCUSSION

The only issue is whether W. Va. Code § 11-10-15(c)(2) [1986] time-bars the assessment of interest in this matter.

Generally, under W. Va. Code § 11-10-15(a) [1986], the West Virginia State Tax Commissioner must issue an “assessment” of tax, interest, additions to tax, or penalties within three (3) years after the date that the original West Virginia state tax return was filed. One exception to this general statute of limitation on issuing West Virginia state tax assessments is for a situation involving a finally determined federal personal income tax deficiency or federal corporate net income tax deficiency leading to a corresponding West Virginia state income tax deficiency. In that situation, under W. Va. Code § 11-10-15(c)(2) [1986], the statute of limitation for issuing an actual “assessment” of -- not merely a preliminary “notice of tax due” for -- West Virginia state tax, interest, additions to tax, or penalties expires ninety (90) days after the taxpayer advises the West Virginia State Tax Commissioner of a final federal determination of a federal income tax deficiency giving rise to a corresponding West Virginia income tax deficiency (or, if later, the assessment limitation period expires when the general three-year-from-filing-of-original-return limitation period expires).

Here, the 90-day-from-notice-to-Commissioner period expired well before the assessment was issued (and the general 3-year-from-filing-of-original-return period had already expired).

CONCLUSIONS OF LAW

Based upon the foregoing Discussion and the applicable law with respect to burden of proof, it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether W. Va. Code § 11-10-15(c)(2) [1986] time-bars the assessment of interest in this matter.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the West Virginia corporate net income tax assessment issued against the Petitioner for the years 1998 and 1999, for interest, must be and is hereby **VACATED**, as time-barred, and the Commissioner may not further pursue that assessment.